IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 503 OF 2005
IN
WRIT PETITION NO. 2025 OF 2004

Appa Pada Rahivashi Sangh ...Petitioner

V/s.

State of Maharashtra & Ors. ...
Respondents.

And

Bombay Environmental Action Group ...Applicants

Mr. Gautam Patel instructed by M/s. M.V. Jayakar & Co.
for the Applicants – in support

Mr. R.M. Sawant, Government Pleader, for Respondent No. 1 –
to show cause

Mr. P.A. Sebastian for Nivara Hakk Welfare Centre

Mr. S.G. Surana for Slum Rehabilitation Authority

Mr. D.D. Madon, Senior Advocate, with Ms. Yasmin Bhansali
for Sumer Corporation

Mr. C.U. Singh, Senior Advocate, instructed by
M/s. Sanjay Udeshi & Co. for the Petitioners
in Writ Petition No. 2025 of 2004 – to show cause.

CORAM: KSHITIJ R. VYAS, C.J., &
DR. D.Y. CHANDRACHUD,J.
DATE: MAY 4, 2006.

P.C. (Per Dr. D.Y. Chandrachud, J.)**:-**

1. In the judgment delivered in *Bombay Environmental Action Group v. A.R. Bharati, Deputy Conservator of Forest, & Ors.,* 2004 (3) Bom.C.R. 244, the Division Bench directed the respondents to remove all encroachers from the area of Sanjay Gandhi National Park (hereinafter, "the National Park", for short) by taking necessary steps within a period of six months. The judgment was delivered on 15th September, 2003, and the period of six moths has expired. It is common ground that the direction of the Division Bench was to be read in the context of the interim order dated 17th July, 1997, directing the State Government to rehabilitate those persons, who were going to be ousted from the area of the National Park, who are eligible for alternative accommodation, and the interim order dated 27th March, 2004. A grievance has been made in this behalf by the Bombay Environmental Action Group to the effect that the direction issued by the Division Bench has still not been complied with and that in the

meantime, there have been new encroachments within the National Park.

2. We directed the Principal Secretary in the Housing Department of the State to file an affidavit explaining why the direction has not been complied with and to set out a time schedule within which the process of rehabilitation will be completed. Accordingly, an affidavit has been filed by Shri N. Rama Rao, Principal Secretary in the Housing Department. In the affidavit, it has been stated that several difficulties were experienced in the process of constructing rehabilitation buildings. One of the issues was whether the buildings should have five or seven storeys, and this was sorted out in September, 2005. It has also been stated that because of the topography of the site which consists of a rocky terrain, the work of construction and laying of infrastructure has taken some time. M/s. Sumer Corporation, the developer in charge of implementing the project, has raised certain issues regarding the role of Nivara Hakk Welfare Centre in the project. The State Government has now decided that whilst the developer will be Sumer

Corporation, Nivara Hakk Welfare Centre will be an NGO, which will assist in the rehabilitation of the oustees from the National Park. The Slum Rehabilitation Authority has been directed to enforce the decision taken by the State Government.

3. The State Government has, through the Principal Secretary in the Housing Department, assured the Court that the following time schedule for completing the rehabilitation of eligible persons within the National Park, who will have to be re-located, shall be observed:-

No. of Tenements	Date of availability of Tenements
3823	30th Sep. 2006
1936	31st Dec. 2006
3000	30th Sep. 2007
3310	31st Dec. 2007

4. The Court has been informed that the first lot of 9 buildings comprising of about 3823 tenements is nearing completion and it has been stated on behalf of the developer that the anticipated date of completion is 31st July, 2006. However, by

way of abundant caution, the rehabilitation of the first lot of 3823 families, which have originally been slated to be re-located by 31st May, 2006, shall be done on or before 30th September, 2006.

5. A submission has been made on behalf of the Applicants (BEAG) that to the extent to which it is feasible, the State Government should ensure that while rehabilitating and re-locating the oustees, they are re-located settlement-wise. We find the suggestion to be fair and take note of the fact that it has not been opposed by any of the Counsel. It will be open to the State Government to take an appropriate decision regarding the manner in which such re-location should be carried out, to the extent feasible settlement-wise.

6. The learned Government Pleader, who appears on behalf of the State, fairly submits that public notices will be issued and announcements will be made in the locality so as to furnish some reasonable period of time for the oustees, who will be re-located in the first lot and thereafter.

7. Counsel for the Slum Rehabilitation Authority states that the revised layout plans, which have been submitted by the developer, will be scrutinised and a decision in accordance with law will be arrived at and communicated within a period of two weeks from today. Counsel states that by a deed of conveyance, the lands have vested in the SRA and all necessary steps will be taken to ensure that the time schedule for ensuring completion will be observed.

8. Counsel, appearing on behalf of Nivara Hakk Welfare Centre, submitted that there are certain issues which remain to be resolved between the Architect, representing the Centre, and the developer. We are categorically of the view that these disputes cannot be resolved in these proceedings. It will be open to the concerned parties to take recourse to the remedies that are available in law.

9. We clarify that this order passed by the Court shall not amount to any modification of the eligibility criteria which have been prescribed for the re-location of the oustees from the National Park.

10. We also clarify that the protection against eviction is limited only to the eligible occupants, who are to be rehabilitated in accordance with the time schedule indicated in the affidavit filed by the Principal Secretary in the Housing Department of the State. In the event that any encroachments have taken place by non-eligible persons, or take place hereafter, the State Government shall take steps forthwith for the removal of the encroachments. We direct strict and immediate compliance with this direction by the State and all the concerned departments. We observe that the Court will be constrained to take a serious view of any dereliction or breach, inviting punitive sanctions.

11. In view of the above directions, the order of injunction passed by this Court on 8th April, 2004 in Writ Petition No. 2025 of 2004 shall stand modified in order to ensure compliance with the aforesaid directions relating to the re-location of eligible oustees.

12.We are constrained to observe that there has not been a concerted effort on the part of the State to ensure due compliance with the directions issued by the Division Bench of the Court. While taking a serious note of the state of affairs, we finally extend time on the assurance of the State Government that everything that is required to be done to enforce compliance with this order shall necessarily be done within the time schedule.

13.Writ Petition No. 2025 of 2004 be listed in the third week of June, 2006.

14.Notice of Motion is disposed of.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD,J.